

110TH CONGRESS  
2D SESSION

# H. R. 5028

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to require that group health plans provide coverage for pervasive developmental disorders such as autism.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 16, 2008

Mr. WEXLER introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to require that group health plans provide coverage for pervasive developmental disorders such as autism.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness in Autism  
5 Treatment Act of 2007”.

1 **SEC. 2. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**  
2 **COME SECURITY ACT OF 1974.**

3 (a) IN GENERAL.—Subpart B of part 7 of subtitle  
4 B of title I of the Employee Retirement Income Security  
5 Act of 1974 (29 U.S.C. 1185 et seq.) is amended by add-  
6 ing at the end the following new section:

7 **“SEC. 714. PARITY FOR PERVASIVE DEVELOPMENTAL DIS-**  
8 **ORDERS.**

9 “(a) IN GENERAL.—A group health plan (and a  
10 health insurance issuer providing health insurance cov-  
11 erage offered in connection with such a plan) that provides  
12 both medical and surgical benefits shall provide coverage  
13 for pervasive developmental disorders, including coverage  
14 for therapeutic, respite, and rehabilitative care for partici-  
15 pants or beneficiaries who have not attained 22 years of  
16 age.

17 “(b) IN-NETWORK AND OUT-OF-NETWORK STAND-  
18 ARDS.—

19 “(1) IN GENERAL.—In the case of a group  
20 health plan (or health insurance coverage offered in  
21 connection with such a plan) that provides benefits  
22 for pervasive developmental disorders, and that pro-  
23 vides both in-network benefits for such disorders and  
24 out-of-network benefits for such disorders, the re-  
25 quirements of this section shall apply separately with  
26 respect to benefits provided under the plan (or cov-

1 erage) on an in-network basis and benefits provided  
2 under the plan (or coverage) on an out-of-network  
3 basis.

4 “(2) CLARIFICATION.—Nothing in paragraph  
5 (1) shall be construed as requiring that a group  
6 health plan (or health insurance coverage offered in  
7 connection with such a plan) eliminate an out-of-net-  
8 work provider option from such plan (or coverage)  
9 pursuant to the terms of the plan (or coverage).

10 “(c) OTHER REQUIREMENTS.—

11 “(1) ANNUAL OR LIFETIME DOLLAR LIMITA-  
12 TIONS.—A group health plan (or health insurance  
13 coverage offered in connection with such a plan)  
14 may not impose any annual or lifetime dollar limita-  
15 tion on benefits for pervasive developmental dis-  
16 orders unless such limitation applies to all medical  
17 and surgical benefits and benefits for pervasive de-  
18 velopmental disorders under the plan (or coverage).

19 “(2) COST SHARING.—A group health plan (or  
20 health insurance coverage offered in connection with  
21 such a plan) may not impose a deductible, coinsur-  
22 ance, or other cost-sharing with respect to the cov-  
23 erage of pervasive developmental disorders under the  
24 plan (or coverage), which is greater than the deduct-  
25 ible, coinsurance, or other cost-sharing, as the case

1 may be, imposed with respect to medical and sur-  
2 gical benefits under the plan (or coverage).

3 “(3) ELIGIBILITY TO ENROLL OR RENEW.—A  
4 group health plan (or a health insurance issuer pro-  
5 viding health insurance coverage offered in connec-  
6 tion with such a plan) may not deny eligibility, or  
7 continued eligibility, to enroll or to renew coverage  
8 under the term of the plan (or coverage), solely for  
9 the purpose of avoiding the requirements of this sec-  
10 tion.

11 “(d) NOTICE UNDER GROUP HEALTH PLAN.—The  
12 imposition of the requirements of this section shall be  
13 treated as a material modification in the terms of the plan  
14 described in the last sentence of section 102(a), for pur-  
15 poses of assuring notice of such requirements under the  
16 plan; except that the summary description required to be  
17 provided under the fourth sentence of section 104(b)(1)  
18 with respect to such modification shall be provided by not  
19 later than 60 days after the first day of the first plan  
20 year in which such requirements apply.

21 “(e) EXEMPTIONS.—

22 “(1) SMALL EMPLOYER EXEMPTION.—

23 “(A) IN GENERAL.—This section shall not  
24 apply to any group health plan (and group  
25 health insurance coverage offered in connection

1 with a group health plan) for any plan year of  
2 a small employer.

3 “(B) SMALL EMPLOYER.—For purposes of  
4 subparagraph (A), the term ‘small employer’  
5 means, in connection with a group health plan  
6 with respect to a calendar year and a plan year,  
7 an employer who employed an average of at  
8 least 2 (or 1 in the case of an employer residing  
9 in a State that permits small groups to include  
10 a single individual) but not more than 50 em-  
11 ployees on business days during the preceding  
12 calendar year.

13 “(C) APPLICATION OF CERTAIN RULES IN  
14 DETERMINATION OF EMPLOYER SIZE.—For  
15 purposes of this paragraph—

16 “(i) APPLICATION OF AGGREGATION  
17 RULE FOR EMPLOYERS.—Rules similar to  
18 the rules under subsections (b), (c), (m),  
19 and (o) of section 414 of the Internal Rev-  
20 enue Code of 1986 shall apply for purposes  
21 of treating persons as a single employer.

22 “(ii) EMPLOYERS NOT IN EXISTENCE  
23 IN PRECEDING YEAR.—In the case of an  
24 employer which was not in existence  
25 throughout the preceding calendar year,

1           the determination of whether such em-  
2           ployer is a small employer shall be based  
3           on the average number of employees that  
4           it is reasonably expected such employer  
5           will employ on business days in the current  
6           calendar year.

7                   “(iii) PREDECESSORS.—Any reference  
8           in this paragraph to an employer shall in-  
9           clude a reference to any predecessor of  
10          such employer.

11                   “(2) INCREASED COST EXEMPTION.—This sec-  
12          tion shall not apply with respect to a group health  
13          plan (or group health insurance coverage offered in  
14          connection with a group health plan) if the applica-  
15          tion of this section to such plan (or coverage) results  
16          in an increase in the cost under the plan (or cov-  
17          erage) of at least 1 percent.

18                   “(f) PERVASIVE DEVELOPMENTAL DISORDER DE-  
19          FINED.—For purposes of this section, the term ‘pervasive  
20          developmental disorder’ means any developmental dis-  
21          ability (as defined in section 102(8) of the Developmental  
22          Disabilities Assistance and Bill of Rights Act of 2000 (42  
23          U.S.C. 15002(8))).

24                   “(g) PREEMPTION, RELATION TO STATE LAWS.—

“(1) IN GENERAL.—Nothing in this section shall be construed to preempt any State law in effect with respect to health insurance coverage to the extent the requirements of such law at least meet the requirements of this section.

6 “(2) ERISA.—Nothing in this section shall be  
7 construed to affect or modify the provisions of sec-  
8 tion 514 with respect to group health plans.”.

9 (b) CONFORMING AMENDMENTS.—

(1) Section 731(c) of such Act (29 U.S.C. 1191(c)) is amended by striking “section 711” and inserting “sections 711 and 714”.

(2) Section 732(a) of such Act (29 U.S.C. 1191a(a)) is amended by striking “section 711” and inserting “sections 711 and 714”.

(c) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act is amended by inserting after the item relating to section 713 the following new item:

“Sec. 714. Parity for pervasive developmental disorders.”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to plan years beginning on or after January 1, 2009.

22 SEC. 3. AMENDMENTS TO INTERNAL REVENUE CODE OF  
23 1986.

24 (a) IN GENERAL.—Subchapter B of chapter 100 of  
25 the Internal Revenue Code of 1986 (relating to group

1 health plan requirements) is amended by adding at the  
2 end the following new section:

3 **“SEC. 9813. PARITY FOR PERVASIVE DEVELOPMENTAL DIS-**  
4 **ORDERS.**

5 “(a) IN GENERAL.—A group health plan that pro-  
6 vides both medical and surgical benefits shall provide cov-  
7 erage for pervasive developmental disorders, including cov-  
8 erage for therapeutic, respite, and rehabilitative care for  
9 participants or beneficiaries who have not attained 22  
10 years of age.

11 “(b) IN-NETWORK AND OUT-OF-NETWORK STAND-  
12 ARDS.—

13 “(1) IN GENERAL.—In the case of a group  
14 health plan that provides benefits for pervasive de-  
15 velopmental disorders, and that provides both in-net-  
16 work benefits for such disorders and out-of-network  
17 benefits for such disorders, the requirements of this  
18 section shall apply separately with respect to bene-  
19 fits provided under the plan on an in-network basis  
20 and benefits provided under the plan on an out-of-  
21 network basis.

22 “(2) CLARIFICATION.—Nothing in paragraph  
23 (1) shall be construed as requiring that a group  
24 health plan eliminate an out-of-network provider op-



1       tion from such plan pursuant to the terms of the  
2       plan.

3       “(c) OTHER REQUIREMENTS.—

4               “(1) ANNUAL OR LIFETIME DOLLAR LIMITA-  
5       TIONS.—A group health plan may not impose any  
6       annual or lifetime dollar limitation on benefits for  
7       pervasive developmental disorders unless such limita-  
8       tion applies to all medical and surgical benefits and  
9       benefits for pervasive developmental disorders pro-  
10      vided under the plan.

11              “(2) COST SHARING.—A group health plan may  
12      not impose a deductible, coinsurance, or other cost-  
13      sharing with respect to the coverage of pervasive de-  
14      velopmental disorders under the plan, which is  
15      greater than the deductible, coinsurance, or other  
16      cost-sharing, as the case may be, imposed with re-  
17      spect to medical and surgical benefits under the  
18      plan.

19              “(3) ELIGIBILITY TO ENROLL OR RENEW.—A  
20      group health plan may not deny eligibility, or contin-  
21      ued eligibility, to enroll or to renew coverage under  
22      the term of the plan, solely for the purpose of avoid-  
23      ing the requirements of this section.

24      “(d) EXEMPTIONS.—

25              “(1) SMALL EMPLOYER EXEMPTION.—

1           “(A) IN GENERAL.—This section shall not  
2           apply to any group health plan for any plan  
3           year of a small employer.

4           “(B) SMALL EMPLOYER.—For purposes of  
5           subparagraph (A), the term ‘small employer’  
6           means, with respect to a calendar year and a  
7           plan year, an employer who employed an aver-  
8           age of at least 2 (or 1 in the case of an em-  
9           ployer residing in a State that permits small  
10          groups to include a single individual) but not  
11          more than 50 employees on business days dur-  
12          ing the preceding calendar year. For purposes  
13          of the preceding sentence, all persons treated as  
14          a single employer under subsection (b), (c),  
15          (m), or (o) of section 414 shall be treated as 1  
16          employer and rules similar to rules of subpara-  
17          graphs (B) and (C) of section 4980D(d)(2)  
18          shall apply.

19          “(2) INCREASED COST EXEMPTION.—This sec-  
20          tion shall not apply with respect to a group health  
21          plan if the application of this section to such plan  
22          results in an increase in the cost under the plan of  
23          at least 1 percent.

24          “(e) PERVASIVE DEVELOPMENTAL DISORDER DE-  
25          FINED.—For purposes of this section, the term ‘pervasive

1 developmental disorder’ means any developmental dis-  
2 ability (as defined in section 102(8) of the Developmental  
3 Disabilities Assistance and Bill of Rights Act of 2000 (42  
4 U.S.C. 15002(8)).”.

5 (b) CONFORMING AMENDMENTS.—The table of sec-  
6 tions for subchapter B of chapter 100 of such Code is  
7 amended by adding at the end the following new item:

“Sec. 9813. Parity for pervasive developmental disorders.”.

8 (c) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply with respect to group health plans  
10 for plan years beginning on or after January 1, 2009.

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